

Environmental Protection Agency

§ 86.1854-12

evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(6) Oral argument may be permitted in the discretion of the Presiding Officer and shall be reported as part of the record unless otherwise ordered by the Presiding Officer.

(f)(1) The Presiding Officer shall make an initial decision which shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator within 20 days of the date the initial decision was filed.

(2) On appeal from or review of the initial decision the Administrator shall have all the powers which he would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

§ 86.1854-12 Prohibited acts.

(a) The following acts and the causing thereof are prohibited:

(1) In the case of a manufacturer, as defined by § 86.1803, of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator), the importation into the United States of any new motor vehicle or new motor vehicle engine subject to this subpart, unless such vehicle or engine is covered by a

certificate of conformity issued (and in effect) under regulations found in this subpart (except as provided in Section 203(b) of the Clean Air Act (42 U.S.C. 7522(b)) or regulations promulgated thereunder).

(2)(i) For any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under Section 208 of the Clean Air Act (42 U.S.C. 7542) with regard to vehicles.

(ii) For a person to fail or refuse to permit entry, testing, or inspection authorized under Section 206(c) (42 U.S.C. 7525(c)) or Section 208 of the Clean Air Act (42 U.S.C. 7542) with regard to vehicles.

(iii) For a person to fail or refuse to perform tests, or to have tests performed as required under Section 208 of the Clean Air Act (42 U.S.C. 7542) with regard to vehicles.

(iv) For a person to fail to establish or maintain records as required under §§ 86.1844, 86.1862, 86.1864, and 86.1865 with regard to vehicles.

(v) For any manufacturer to fail to make information available as provided by regulation under Section 202(m)(5) of the Clean Air Act (42 U.S.C. 7521(m)(5)) with regard to vehicles.

(3)(i) For any person to remove or render inoperative any device or element of design installed on or in a vehicle or engine in compliance with regulations under this subpart prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.

(ii) For any person to manufacture, sell or offer to sell, or install, any part or component intended for use with, or as part of, any vehicle or engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a vehicle or engine in compliance with regulations issued under this subpart, and where the person knows or should know that the part or component is being offered for sale or installed for this use or put to such use.

(4) For any manufacturer of a vehicle or engine subject to standards prescribed under this subpart:

(i) To sell, offer for sale, introduce or deliver into commerce, or lease any such vehicle or engine unless the manufacturer has complied with the requirements of Section 207(a) and (b) of the Clean Air Act (42 U.S.C. 7541(a), (b)) with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with Section 207(c)(3) of the Clean Air Act (42 U.S.C. 7541(c)(3)).

(ii) To fail or refuse to comply with the requirements of Section 207 (c) or (e) of the Clean Air Act (42 U.S.C. 7541(c) or (e)).

(iii) Except as provided in Section 207(c)(3) of the Clean Air Act (42 U.S.C. 7541(c)(3)), to provide directly or indirectly in any communication to the ultimate purchaser or any subsequent purchaser that the coverage of a warranty under the Clean Air Act is conditioned upon use of any part, component, or system manufactured by the manufacturer or a person acting for the manufacturer or under its control, or conditioned upon service performed by such persons.

(iv) To fail or refuse to comply with the terms and conditions of the warranty under Section 207(a) or (b) of the Clean Air Act (42 U.S.C. 7541(a) or (b)).

(b) For the purposes of enforcement of this subpart, the following apply:

(1) No action with respect to any element of design referred to in paragraph (a)(3) of this section (including any adjustment or alteration of such element) shall be treated as a prohibited act under paragraph (a)(3) of this section if such action is in accordance with Section 215 of the Clean Air Act (42 U.S.C. 7549);

(2) Nothing in paragraph (a)(3) of this section is to be construed to require the use of manufacturer parts in maintaining or repairing a vehicle or engine. For the purposes of the preceding sentence, the term “manufacturer parts” means, with respect to a motor vehicle engine, parts produced or sold by the manufacturer of the motor vehicle or motor vehicle engine;

(3) Actions for the purpose of repair or replacement of a device or element of design or any other item are not

considered prohibited acts under paragraph (a)(3) of this section if the action is a necessary and temporary procedure, the device or element is replaced upon completion of the procedure, and the action results in the proper functioning of the device or element of design;

(4) Actions for the purpose of a conversion of a motor vehicle or motor vehicle engine for use of a clean alternative fuel (as defined in title II of the Clean Air Act) are not considered prohibited acts under paragraph (a) of this section if:

(i) The vehicle complies with the applicable standard when operating on the alternative fuel; and

(ii) In the case of engines converted to dual fuel or flexible use, the device or element is replaced upon completion of the conversion procedure, and the action results in proper functioning of the device or element when the motor vehicle operates on conventional fuel.

[75 FR 25691, May 7, 2010]

§§ 86.1855–86.1859 [Reserved]

§ 86.1860–04 How to comply with the Tier 2 and interim non-Tier 2 fleet average NO_x standards.

(a) The fleet average standards referred to in this section are the corporate fleet average standards for FTP exhaust NO_x emissions set forth in: § 86.1811–04(d) for Tier 2 LDV/Ts and MDPVs (0.07 g/mi); § 86.1811–04(1)(3) for interim non-Tier 2 LDV/LLDTs (0.30 g/mi); and, § 86.1811–04(1)(3) for interim non-Tier 2 HLDT/MDPVs (0.20 g/mi). Unless otherwise indicated in this section, the provisions of this section apply to all three corporate fleet average standards, except that the interim non-Tier 2 fleet average NO_x standards do not apply to a manufacturer whose U.S. LDV/T and MDPV sales are 100% Tier 2 LDV/Ts and MDPVs.

(b)(1) Each manufacturer must comply with the applicable fleet average NO_x standard, or standards, on a sales weighted average basis, at the end of each model year, using the procedure described in this section.

(2) During a phase-in year, the manufacturer must comply with the applicable fleet average NO_x standard for the required phase-in percentage for that